IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.Rev.Pet.No. 953 of 1999()

CRA.330/1994 of I ADDL.SESSIONS COURT, ERNAKULAM
CC.12/1990 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
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REVN. PETITIONER: APPELLANT/ ACCUSED

ABDUL KHADER KUNHEEM,
S/O.KUNHI, PARANGODATHU HOUSE,
VALIYORE P.O., VENGARA PANGAYATH,
MALAPPURAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: RESPONDENTS/ COMPLAINANT
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1. **THE ASSISTANT COLLECTOR OF CENTRAL EXICSE,**
   CENTRAL EXCISE DIVISION,
   PALAKKAD.

2. **STATE OF KERALA, REP.BY THE**
   PUBLIC PROSECUTOR , HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI. AJITH KRISHNAN, ADDL.CGSC
SRI.JOHN VARGHESE, ASSISTANT SG
PUBLIC PROSECUTOR
SRI.P.PARAMESWARAN NAIR, CGC

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON 10.08.2007 PASSED THE FOLLOWING:

CRL.RP. NO.953/1999

ORDER CRL.MP. NO.4403/1999 IN CRL.RP. NO.953/1999

DISMISSED

10.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NO. 953 OF 1999

DATED THIS THE 10th August 2007

ORDER

The revision petitioner is the accused in C.C.No.12/1990 in the file of the Additional Chief Judicial Magistrate Economic Offences, Ernakulam with respect to the offence under Sections 135(1)(i) of Customs Act and Section 85 (1)(a) of the Gold (Control) Act; and stands convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.20,000/- and in default to undergo simple imprisonment for one year for the offence under Section 135(1)(i) of the Customs Act and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for three months for the offence under Section 85(1)(a) of the Gold (Control)Act. The prosecution case is that on 27-1-1989 the Customs Officers intercepted a taxi car bearing registration No.MSV.5485 proceeding towards Palghat from Coimbatore at Koottupatha in the National Highway and it was found that the accused had concealed 6 ½ gold biscuits in

his shoes and on questioning it was found that he had smuggled the same from Abudhabi and the car and the accused were brought to the customs office. The recovery was made in the presence of independent witnesses. The gold biscuits weighed 756.7 grams and were of 24 carat purity. The market value of the said quantity of gold is estimated at Rs.2,57,278/-.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 6 and Exts.P1 to P6. The independent witnesses examined, i.e. PW5 and PW6 did not support the prosecution and was treated as hostile. PW4, the goldsmith who the gold biscuits and issued Ext.P2 assay certificate has also not supported the prosecution in full. The trial court found that PW4 has deliberately attempted to help the accused as he has stated that he only tested one gold biscuit with the touchstone. PW1 is the Assistant Director of Revenue Intelligence, Calicut, who filed the complaint and PW2 is the Superintendent of Central Excise, Palghat before whom the accused was produced by PW3 and it was PW2 who arrested the accused and produced him before the court on the next day. It was PW3 who intercepted the car and

detected the offence. He was then working as Superintendent in the Special Customs Preventive Division. He has testified with respect to the details of interception and the recovery. It was found that the accused arrived at Bombay from Abu Dhabi and from Abu dhabi to Coimbatore by flight and he was proceeding to his native place at Vengara in Malapppuram District by car. Two air tickets, i.e. Ext.P4 series were seized as per Ext.P3 seizure mahazar. The receipt of remittance of customs duty of Rs.875/- at Bombay Air Port was also produced. The passport was also examined. It was found that two gold biscuits were concealed inside both the shoes of the accused. The gold biscuits were recovered as per Ext.P3 mahazar at the customs office. Further there is a statement under Section 108 of the Customs Act rendered by the accused which was not relied on by the courts below as PW3 is not empowered to have the statement recorded as he is not a Gazetted officer as contemplated under Section 108 of the Customs Act. But the evidence of PW3 with respect to the detection and seizure was found not contradicted in any material aspects. The gold biscuits

bore foreign markings. In the circumstances and in the light of the concurrent findings of the courts below, I find that the contentions of the revision petitioner, which were raised before the courts below, considered by the courts below and discarded by the courts below have no merits. The conviction is confirmed.

3. Counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in January 1989 and that 18 years have elapsed since the commencement of the proceedings and that the accused has already undergone COFEPOSA detention for one year, loss his job and that his wife and four children, right now the daughters are of marriable age, are depending solely on his income. It is also pointed out that rigour of the gold control provisions are no longer there. In the circumstances and considering that the accused has also undergone pre-trial detention in the mater, I find that the sentence imposed under Section 135(1)(i) is liable to be modified. Hence, the sentence is modified to imprisonment till

the rising of the court and to pay a fine of Rs. 25,000/-(Rupees twenty five thousand) and in default to undergo simple imprisonment for six months. No separate sentence is to be awarded for the offence under Section 85(1)(a) of the Gold (Control) Act. The revision petitioner is granted four months time to remit the fine amount. He shall appear before the Additional Chief Judicial Magistrate Economic Offences, Ernakulam on 10-12-2007 to receive sentence.

The Crl. revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 953 OF 1999
JORDER

10-8-2007

K.R. UDAYABHANU, J.

CRL.A.NO. OF

DATED THIS THE th June 2007

ORDER

K.R.UDAYABHANU, JUDGE

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